

DrummondWoodsum

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March 11, 2013

Michael Parker, Project Manager
Dept. of Environmental Protection
#17 State House Station
Augusta, ME 04333-0017

FILE COPY

RE: Application to Amend Solid Waste License No. S-20700-WD-BC-A

Dear Mr. Parker:

In accord with Paragraph 35 of the Department's Second Procedural Order in the above captioned matter, please be advised that OTFF reserves time to cross examine each witness from the Bureau of General Services and NEWSME Landfill Operations, LLC (Mr. Michael Barden, Mr. Brian Oliver, Mr. Michael Booth, and Mr. Jeremy Labbe). We request ten (10) minutes for cross examination of each of these witnesses- a total of forty (40) minutes. OTFF cross examination of these witnesses is necessary to establish impacts to the applicants' capacity, leachate management, and fuel supply obligations as they relate to the licensing criteria applicable to the above captioned application.

The applicants' ability to meet its capacity, leachate management and fuel supply obligations (as set forth in the chain of title for the JRL (Exhibit 1 to the Amended Application), the JRL Operating Services Agreements and Second Amendment thereto (each of which is in the record and Exhibit B to which is the Fuel Supply Agreement), and the Leachate Disposal Agreement (Exhibit 8 to the Amended Application¹)) bears directly upon their ability to comply with the applicable licensing criteria of the Waste Management Law and the Solid Waste Management Rules.

Sincerely,



Joanna B. Tourangeau
JBT/as

cc: Intervenor Service List

¹ Careful review of the Original and Amended Application indicates that the statement in the Amended Application that "[i]ncluded in Attachment 8 are the Agreements in place that allow JRL to dispose of leachate at the OTFF facility" is inaccurate because Attachment 8 includes only the Amendment to the Leachate Disposal Agreement, not the original, underlying Leachate Disposal Agreement. Amended Application at 3.4.3. To correct the record, OTFF submits the original Leachate Disposal Agreement.

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LEACHATE DISPOSAL AGREEMENT

THIS LEACHATE DISPOSAL AGREEMENT (the "Agreement") made and entered into this 5th day of February, 2004 by and between Fort James Operating Company ("FJ"), a Virginia corporation with a place of business in Old Town, Maine, and New England Waste Services of ME, Landfill Operation Company, LLC ("NEWSMELOC"), a Maine corporation with a place of business in Saco, Maine.

WITNESSETH:

WHEREAS, FJ owns and operates a certain Wastewater Treatment Plant located at the FJ paper mill in Old Town, Maine (the "WTP"), that provides for the treatment and disposal of wastewater pursuant to duly issued and valid licenses and permits; and

WHEREAS, FJ has entered into an Amended and Restated Agreement Regarding Solid Waste Disposal Facility Acquisition and Operation with the State of Maine, Executive Department, State Planning Office dated as of the date hereof ("Landfill Sale Agreement"); and

WHEREAS, NEWSMELOC operates a secure, Subtitle D landfill located in Old Town (the "Landfill") in accordance with a certain Operating Services Agreement between the State of Maine and Casella Waste Systems, Inc, an affiliate of NEWSMELOC, which Landfill will provide solid waste disposal services to FJ, and

WHEREAS, the operation of the Landfill generates and will in the future generate leachate; and

WHEREAS, NEWSMELOC desires to dispose of the leachate to the WTP;

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and the mutual benefits to be derived, the parties hereto agree as follows:

ARTICLE 1. GENERAL

1.1 During the term of the capacity commitments under Section 5.1 of the Landfill Sale Agreement, FJ or its successor and assigns or successor owners, shall provide a back-up source for treatment of leachate produced at the Landfill, through processing at its WTP subject to the conditions specified herein.

1.2 FJ shall only be required to receive and treat leachate from the Landfill at the WTP in accordance with all applicable laws, regulations, permits, approvals and the provisions set forth herein during the term of this Agreement.

1.3 NEWSMELOC or its authorized contractor(s) shall transport the leachate to the WTP for disposal in accordance with the terms and conditions specified in this Agreement.

1.4 NEWSMELOC shall exercise its best and most diligent efforts to establish a leachate disposal agreement with the City of Old Town as its primary source for disposal of leachate from the Landfill. The leachate disposal provided under this Agreement shall be a back-up source for NEWSMELOC.

ARTICLE 2. CONTRACT TERM

2.1 The term of this Agreement shall commence on the date of this Agreement and shall continue in effect for so long as the capacity commitments under Section 3.1 of the Landfill Sale Agreement are in force, unless this Agreement is earlier terminated as hereinafter provided.

2.2 Notwithstanding any other provision of this Agreement, FJ's obligations under this Agreement shall terminate in the event of permanent closure of FJ's Old Town Mill.

ARTICLE 3. CONTRACT PRICE

3.1 There shall be a fee for the treatment of Landfill leachate at the FJ WTP in an amount equal to FJ's costs and expenses, of any nature, incurred in connection with FJ providing such treatment, as determined by the parties based upon the Landfill's flow, biochemical oxygen demand ("BOD") and solids; and including, without limitation, appropriate allowances for depreciation, amortization and allocable overhead.

ARTICLE 4. LEACHATE DISPOSAL PROCEDURES

4.1 NEWSMELOC shall provide leachate chemical conditioning, such as the addition of lime, as may be necessary to maintain pH in compliance with the standards set forth in Article 6 of this Agreement.

4.2 The hours of operation for the discharge of leachate at the WTP shall not be limited but preferentially between 7_ a.m. and 10_ p.m., seven (7_) days per week, or at such other reasonable times as may be determined by FJ in consultation with NEWSMELOC. Fort James has extended facility outages from time to time; during these periods the WTP may not be available for the disposal of leachate. Fort James will provide NEWSMELOC with notice of the WTP unavailability.

4.3 Transport of leachate shall be in accordance with applicable Town, State and Federal requirements.

- 4.4 Truck operations shall comply with the following safety and maintenance procedures or such other reasonable written procedures as may be determined by FJ.
- 4.4.1 Speed limit of 10 miles per hour while on WTP property.
 - 4.4.2 Enter and exit by side gate only.
 - 4.4.3 Back-up alarms and other vehicle safety devices shall be fully operational.
 - 4.4.4 Drivers shall comply with reasonable operational personnel instructions while on property.
 - 4.4.5 Any and all spilled leachate shall be promptly cleaned up by NEWSMELOC or its agents or contractors whether on the WTP property or elsewhere.
 - 4.4.6 Drivers shall clean/hose the leachate discharge area immediately after the discharge or leachate has been completed.
 - 4.4.7 Hose opening, discharge piping, etc., shall be covered or plugged when no longer in use to minimize leakage and malodorous conditions.
 - 4.4.8 In the event NEWSMELOC is unable to establish a primary leachate disposal arrangement with the City of Old Town, then NEWSMELOC may elect, at its sole expense, to construct a sewer line to convey leachate directly from the Landfill to the WTP. NEWSMELOC and FJ agree to mutually cooperate on the location and the design of the sewer line.
- 4.5 NEWSMELOC drivers and WTP personnel shall observe the procedures outlined below prior to leachate discharge.
- 4.5.1 The driver shall complete a leachate receiving form for each shipment and submit it to the WTP operational personnel.
 - 4.5.2 The driver shall provide a sample of the tanker contents to WTP operational personnel upon request.
 - 4.5.3 The pH range of the sample shall be between 5.5 and 9.5, or such other standard necessary for the WTP to comply with its permit(s) then in effect, and the sample shall have the general visual characteristics of leachate.
 - 4.5.4 WTP personnel will have the right to visually inspect for volume of leached discharge.
 - 4.5.5 WTP personnel shall, after verification of the items listed in sections 4.5.1 through 4.5.4, complete and sign the leachate receiving form. Copies of the same shall be submitted to the WTP's Chief Operator. A copy shall be retained by the driver.

ARTICLE 5. LIMITATIONS OF LEACHATE

- 5.1 The amount of leachate that may be transported and discharged each day to the WTP shall not exceed 300,000 gallons per day or the availability of treatment capacity after satisfaction of all FJ's present and future wastewater treatment needs without express written consent of FJ. FJ and NEWSMELOC estimate the daily discharge shall be 45,000 ____ gallons.
- 5.2 NEWSMELOC shall comply with the sampling and monitoring program specified in Article 6 to ensure quality control of the leachate.
- 5.3 NEWSMELOC shall pay the costs of the sampling and monitoring program set forth in Article 6.
- 5.4 In the event that the receipt and treatment of NEWSMELOC's leachate at the WTP cause FJ to be subject to federal or state regulations which it would not otherwise be subject to, and if compliance with such laws or regulations causes FJ to incur additional costs which are caused by and are directly attributed to the receipt and treatment of NEWSMELOC's leachate at the WTP as provided for by applicable laws and regulations; or the receipt and treatment of NEWSMELOC's leachate at the WTP causes FJ to violate its discharge permit or any applicable federal, state and local law, regulation or bylaw, NEWSMELOC shall pay and be liable for that share of any administrative or civil penalties, fines or costs of compliance which are caused by and are directly attributable to the receipt and treatment of NEWSMELOC leachate at the WTP.
- 5.5 NEWSMELOC shall not add any materials (including, without limitation, any Materials of Environmental Concern, as defined in the Landfill Sale Agreement) to the leachate after it is collected at the Landfill and shall not add any other solid, liquid, or gaseous materials or substance to the collected leachate without the express written consent of FJ; provided, however, that NEWSMELOC, at its sole discretion, may add substances utilized for the purposes of maintaining pH and/or reducing odors to the leachate collection tanks, to transport vehicles or to the Landfill; and provided further that FJ may require NEWSMELOC to undertake such additional odor control measures which are reasonable and in accordance with accepted industry practice.
- 5.6 Notwithstanding any other provision of this Agreement to the contrary, FJ reserves the right to impose on NEWSMELOC such effluent quality standards and peak flow limitations for leachate as may be imposed by FJ from time to time on all users for the protection of its WTP, and preservation of all governmental permits, approvals and authorizations necessary for its operation. The leachate produced at the Landfill must be compatible with FJ's WTP requirements and not cause "interference" as that term is defined under 40 C.F.R. § 403.3 (i), notwithstanding that the WTP is not a publicly owned treatment works.

ARTICLE 6. SAMPLING AND MONITORING REQUIREMENTS

- 6.1 A sample of leachate may be taken from each truckload which is transported to the WTP from the landfill. The sample shall be visually inspected and checked for pH by WTP operational personnel.
- 6.2 Two random samples will be taken by the Superintendent from the truck twice per year and will be analyzed for the following parameters:

6.2.1 Volatile Organics (VOC's)

EPA Method 624.1

<u>VOC's</u>	<u>Limit (PPM)</u>
Total VOC's	350

6.2.2 Chemical and Indicator Parameters

<u>Parameter</u>	<u>Limits</u>
PH	5.5-9.5

6.2.3 TCLP Metals

	<u>Limits</u> <u>(PPM)</u>
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Arsenic	<5.0
Barium	<100.0
Lead	<5.0
Cadmium	<1.0
Silver	<5.0
Chromium	<5.0
Mercury	<0.2
Selenium	<1.0

6.2.4 BOD to be analyzed once per month

<u>BOD</u>	<u>lbs.</u>
Total	TBD

- 6.3 All Testing performed will be funded by NEWSMELOC
- 6.4 Leachate analyses shall be performed by an EPA certified and DEP approved laboratory and paid for by NEWSMELOC. The analyses shall be conducted in accordance with the methods prescribed in the latest edition of "Standard Methods for the Examination of Water and Wastewater", "Methods for Chemical Analysis of Water and Waste", U.S. Environmental Protection Agency, or in accordance with any other generally accepted analytical method.

- 6.5 FJ shall be promptly provided with a copy of NEWSMELOC's leachate analysis results.

ARTICLE 7. INSURANCE

- 7.1 NEWSMELOC shall maintain statutory worker's compensation insurance and general liability insurance in an amount not less than \$1 million during the term of this Agreement for claims arising out of NEWSMELOC's use of the WTP. NEWSMELOC shall require any company transporting NEWSMELOC's leachate to maintain statutory worker's compensation insurance and auto liability insurance, during the term of this Agreement with a combined single limit of not less than \$1 million for claims arising out of the transport of NEWSMELOC's leachate under this Agreement. NEWSMELOC shall provide FJ upon execution of this Agreement and annually thereafter, and whenever changed, certificates attesting to the existence of such insurance and naming FJ as an additional insured. Each certificate shall contain a statement of the insurer's undertaking to notify the party to whom the certificate is addressed at least ten (10) days prior to the cancellation of any policy covered thereunder.
- 7.2 All insurance is to be with companies authorized to do business in Maine. All such insurance shall be obtained and maintained at the sole cost and expense of NEWSMELOC, its agents or contractors.
- 7.3 Notwithstanding any other provisions of this Agreement, in the event that NEWSMELOC does not have in full force and affect the required insurance, FJ may refuse to accept and treat leachate from NEWSMELOC until such time as the required insurance is obtained by giving prompt notice of same to NEWSMELOC. Nothing contained herein shall prevent FJ from terminating this Agreement because of failure of NEWSMELOC to obtain and maintain the required insurance; provided, however, that FJ and NEWSMELOC shall, in such circumstances, confer with each other in an attempt to resolve the insurance issues to the reasonable satisfaction of FJ.

ARTICLE 8. NOTICES

- 8.1 Any notice from FJ to NEWSMELOC relating to or required under this Agreement shall be deemed to be given when posted by certified mail, return receipt requested to the following address: Jim Hiltner, Casella Waste Systems, 110 Main Street, Suite 1308, Saco, Maine 04072
- 8.2 Any notice from NEWSMELOC to FJ relating to or required under this Agreement shall be deemed to have been given when posted by certified mail, return receipt requested to the following address: Michael Curtis, Georgia-Pacific Corporation, P.O. Box 547, Old Town, Maine 04468.

- 8.3 Either party may change its address for purposes of this Article by so notifying the other party in the manner provided in this Article 8.

ARTICLE 9. AUTHORITY TO CONTRACT

- 9.1 FJ expressly represents and warrants that it has been duly authorized to enter into this Agreement in accordance with applicable federal, state and local laws, bylaws and regulations as a legally binding agreement enforceable in accordance with the terms set forth herein.
- 9.2 FJ's obligations hereunder are subject to receipt by FJ of all necessary federal, State and local permits, approvals and authorizations for the treatment of the leachate, all cost of seeking and obtaining such approvals to be borne by NEWSMELOC. FJ provides no assurance of the ability to obtain or maintain such permits, approvals and authorizations, but agrees to exercise commercially reasonable efforts to obtain and maintain the same.

ARTICLE 10. DEFAULT

The failure of either party to perform any of its obligations hereunder shall be a default by that party and a breach of this Agreement. No waiver of any default shall constitute a waiver of any other breach or default whether of the same or any other term or condition. Either party may provide prompt written notice to the other party of any breach of this Agreement. The party receiving such notice shall have thirty (30) days after receipt of such notice to cure the breach or otherwise resolve the issues in a manner agreeable, in writing, to the other party.

ARTICLE 11. INDEMNIFICATION

NEWSMELOC agrees to defend, indemnify and hold harmless FJ, its officers, employees and agents from and against any and all suits, actions, claims and demands of any kind whatsoever, including without limitation, for personal injury, death, property damage, and environmental liability occurring to any person or entity, reasonable attorneys' fees, arising by reason of any breach of this Agreement or any negligent act or omission by NEWSMELOC, its agents, servants, employees or subcontractors in the performance of this agreement.

ARTICLE 12. TERMINATION

- 12.1 Either party may terminate this Agreement upon thirty (30) days written notice to the other party in the event that the other party has materially defaulted in its obligations hereunder and has not cured said material default pursuant to the provisions of Article 10 of this Agreement.
- 12.2 FJ may terminate the Agreement upon seven (7) days written or any period of time required under any applicable permit or order, which ever is longer,

in the event that public health and safety so require or any regulatory authority or court having jurisdiction over the WTP requires cessation of NEWSMELOC's leachate for disposal. In the event that FJ receives notices of any alleged violation or other matter or proceeding which relates to NEWSMELOC's disposal of leachate at the WTP, FJ shall promptly notify NEWSMELOC of same in writing. NEWSMELOC and FJ shall forthwith confer and cooperate in good faith to attempt to timely resolve matters which are the subject of said notice of violation or order at minimal cost to FJ and NEWSMELOC.

ARTICLE 13. FORCE MAJEURE

Neither party shall be liable to the other, or be deemed to be in breach of this Agreement, for any failure or delay in rendering performance arising out of causes beyond its reasonable control and not due to its fault or negligence. Such causes include but are not limited to act of God, acts of war or military authority, fires, explosions, floods, epidemics, quarantine restrictions, riots, labor strikes, unusually severe weather or change of law. In the event the provisions of this Article are believed to apply, the party relying thereon shall give prompt written notice to the other party of the circumstances, the basis for the applicability of the Article and the anticipated time required to cure such failure or delay in performance.

ARTICLE 14. ADDITIONAL PROVISIONS


- 14.1 If any provision of this Agreement or its application to any person or circumstance, is invalid or unenforceable, then the remainder of this Agreement, or the application of said provision to other persons or circumstances shall not be affected thereby; provided, however, that if any provision of its application is invalid or unenforceable, then a suitable and equitable provision, mutually agreed to, shall be substituted therefore in order to carry out so far as may be valid and enforceable the intended purpose of the invalid or unenforceable provisions.
- 14.2 This Agreement is delivered, and is intended to be performed, in the State of Maine, and it shall be construed and enforced in accordance with its laws, rules and regulations.
- 14.3 Any provisions of this Agreement which refers to a federal, state, or local law, rule, regulation, standard, or guideline, shall be considered to refer to the most current applicable version of such law, rule, regulations, standard, or guideline so as to ensure that the requirements of this Agreement are consistent at all times with currently applicable requirements enacted or adopted by federal, state and local authorities with jurisdiction over the matters which are the subject of this Agreement.

- 14.4 Sections and subsections used in this Agreement are for convenience or reference only and shall not be deemed to alter or affect any provision thereof.
- 14.5 All remedies provided in this Agreement are distinct and cumulative to any other right or remedy under this Agreement or afforded by law or equity, and may be exercised concurrently, independently, or successively. The failure on the part of either party to enforce any of its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provision in the future.
- 14.6 This Agreement contains the entire agreement between NEWSMELOC and FJ and supersedes all previous contemporaneous communications, representations or agreements. This Agreement may be modified only by written amendment signed by both parties.
- 14.7 This Agreement shall not be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld or delayed. Notwithstanding the preceding sentence, however, this Agreement may be assigned by NEWSMELOC without consent to any entity controlling, controlled by, or under common control with NEWSMELOC.
- 14.8 This Agreement is subject to termination and rescission under the terms and provisions set forth in Sections 2.10 of the Landfill Sale Agreement and 5.3 of the Operating Services Agreement.

ACKNOWLEDGEMENT OF ARBITRATION. THE PARTIES HERETO ACKNOWLEDGE THAT THIS DOCUMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT EACH PARTY UNDERSTANDS THAT HE/SHE/IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THIS ARBITRATION AGREEMENT EXCEPT AS PROVIDED IN THIS PARAGRAPH OR UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL LAW OR CIVIL RIGHTS. INSTEAD EACH PARTY HAS AGREED TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, FJ by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

NEW ENGLAND WASTE SERVICES OF ME, LANDFILL OPERATING COMPANY, LLC.


James W. Poshley
President

OWNER: GEORGIA-PACIFIC CORPORATION

Ralph Feck, Vice-President, Old Town Operations

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, FJ by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

NEW ENGLAND WASTE SERVICES OF ME, LANDFILL OPERATING COMPANY, LLC.

James Hiltner

Vice President

Feat. James Operating Company
OWNER: ~~GEORGIA PAPER CORPORATION~~
Michael C. Burandt

~~Ralph Eck, Vice President, Old Town Operations~~
Michael C. Burandt, Executive Vice President - N.A.
Consumer Products